

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Sid Brooks**

In re:)	
MOTION PRACTICE STANDARDS IN)	STANDING ORDER 2006-1-SBB
ADVERSARY PROCEEDINGS AND)	
CONTESTED MATTERS)	

**STANDING ORDER 2006-1-SBB REGARDING MOTIONS FOR RELIEF FROM
AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1) and/or (2)**

THIS MATTER comes before the Court *sua sponte* and on consideration of the need for an effective method of dealing with motions for relief from automatic stay. In order to better serve the public and the bar,

IT IS ORDERED that the following procedures shall apply to all motions for relief from automatic stay:

I. Introduction

A. Purpose and Authority

Consistent with Fed.R.Civ.P. 1, these motion practice standards are adopted to secure the just, speedy, and inexpensive determination of relief from automatic stay matters. These standards shall apply to all motions for relief from automatic stay filed on or after **April 28, 2006**. This Standing Order may be revised from time to time, if need so arises, and may be revised without notice and may be modified by orders entered in specific proceedings/cases.

B. Scope

These motion practice standards supplement and do not supplant or supercede the Federal Rules of Bankruptcy Procedure (Fed.R.Bankr.P.), Bankruptcy Official Forms, and/or Local Bankruptcy Rules (L.B.R.). They govern only relief from automatic stay motion practice and procedure before Chief Judge Sidney B. Brooks, United States Bankruptcy Court for the District of Colorado.

II. Motion Practice Requirements

A. Generally

Our division strictly adheres to L.B.R. 401 in conducting relief from automatic stay hearings. The motion for relief from automatic stay shall be filed together with a legally sufficient notice pursuant to L.B.R. 401, a certificate of service, and a proposed Order.

B. The Contents of the Motion for Relief from Automatic Stay

1. The motion for relief from automatic stay must set forth the specific grounds upon which relief is being requested.
2. In a motion seeking relief from automatic stay under 11 U.S.C. § 362(d)(1), the movant must be specific in identifying the “cause” for granting relief from automatic stay. If the “cause” for granting relief from the automatic stay is “lack of adequate protection of an interest in property,” the movant must specifically allege the nature of the inadequacy of the protection in the movant’s interest in property. *See, e.g.,* 11 U.S.C. § 361 (which sets forth examples of adequate protection).
3. In a motion seeking relief from automatic stay under 11 U.S.C. § 362(d)(2), the movant shall identify the current amount of the secured claim and unsecured portion, if any, and the amount of any other known liens against the property, the estimated value of the property subject to the movant’s lien, and a statement regarding how that value has been determined. The movant shall also provide, as exhibits to the motion, a statement of how the lien was established and, if by loan, a history of payments made under the loan, and payments not made, or not made in full, for the relevant time frame giving rise to the motion. The movant, if it is not the original party whose interest is secured by the lien must set forth by exhibits, affidavits, or other legally sufficient proof that it is now the proper party to enforce the lien. The movant shall also specify the reasons that the property is not necessary to an effective reorganization.
4. The above is a predicate for the filing of a motion for relief from automatic stay so as to put the responding part(ies) on notice of the basis(es) for the relief requested. It does not supercede the burdens of proof set forth in 11 U.S.C. § 362(g), which provides that the burden of proof under 11 U.S.C. § 362(c) is as follows:

(1) the party requesting such relief
has the burden of proof on the issue
of the debtor’s equity in property;
and

(2) the party opposing such relief has the
burden of proof on all other issues.

See also, In re Anthem Communities/RBG, LLC, 267 B.R. 867 (Bankr. D.Colo. 2001).

C. Responses to Motions for Relief from Automatic Stay

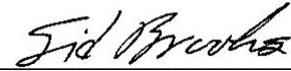
1. A response to the motion for relief from automatic stay **must** be filed within the time set forth in the motion for relief from automatic stay. In accordance with L.B.R. 401 and L.B.F. 401.1, this is within five (5) court days before the hearing on the motion for relief from automatic stay or as otherwise specified in the notice. **If there is *no* timely response to the motion for relief from the automatic stay, the hearing set on the motion for relief from automatic stay will be vacated and an order granting the relief requested may be granted without further notice or hearing.**
2. If a response is filed, the hearing set on the notice will be a “preliminary hearing.” A final evidentiary hearing may be set thereafter if “there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing.” 11 U.S.C. § 362(e). Local Rule 401 contemplates the use of detailed offers of proof and no live witnesses. However, this does not mean that the Court may not dispose of the motion for relief from automatic stay at the preliminary hearing. If the offers of proof demonstrate a genuine issue of material fact, such that if the party opposing relief prevailed on the factual issue, it would cause that party to defeat the motion, then the Court will set the matter for a final evidentiary hearing and treat the initial hearing as a preliminary hearing.
3. If a response is filed, the parties must exchange exhibits and prospective witness lists with opposing party/counsel prior to the preliminary hearing. Failure to identify an expert witness, and to tender a list of the expert’s qualifications and a written summary of the experts’s expected testimony and opinions may result in the preclusion of such testimony at the final hearing on the motion for relief from automatic stay.
4. Relief from stay proceedings are “summary proceedings” in nature. While parties need to present detailed offers of proof at the preliminary hearing, the Court will not “finally determine” and fully dispose of all factual issues raised. It will only make summary determinations as to whether the statutory grounds for relief have been satisfied.

IT IS FURTHER ORDERED that failure to comply with this Order and/or the procedures identified herein may result in denial of requested relief.

IT IS FURTHER ORDERED that this Order shall become effective **April 28, 2006**

Dated this 12th day of April, 2006.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Sid Brooks", is written over a horizontal line.

Sidney B. Brooks,
United States Bankruptcy Judge